



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

June 20, 1958

Honorable Jesse James  
Treasurer, State of Texas  
Capitol Station  
Austin, Texas

Opinion WW-464

Re: Authority of the State  
Treasurer to clear cer-  
tain funds held by the  
Treasury Department by  
depositing the funds to  
the General Revenue Fund.

Dear Mr. James:

You have requested our opinion as to whether certain funds in the State Treasury Suspense Account may be cleared and transferred to the General Revenue Fund. In your letter you have referred to those funds listed in Attorney General's Opinion No. 0-5844, which are described and listed as follows, (quoting from your letter requesting Opinion No. 0-5844):

"Some time ago it was discovered that there was a total of \$2,667.32 deposited in several Texas Banks, in various accounts, belonging to the State of Texas, none of which had ever been entered on the State Treasurer's records.

"On the assumption that the above amounts belonged to the State and should rest in the custody of the State, we drew drafts on the following banks covering the accounts and the amounts indicated:

"American National Bank, Austin, Texas			
"R. L. Daniel, Commissioner of Insurance	\$10.78		
Deaf & Dumb Institute	.80		
Deaf, Dumb & Blind Institute	.58		
James E. Ferguson, Crockett Road District	16.25		
O. M. Edwards, State Treasurer	13.40		
R. C. Roberdeau, Treasurer			
State Labor Commission	15.00		
Texas Rehabilitation Commission (Adm.Fd.)	3.22		
Charley Lockhart, State Treasurer			
Trust Fund	127.68	\$187.71	
"Austin National Bank, Austin, Texas			
S. H. Terrell, Comptroller	\$ .30	\$	.30

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"Capital National Bank, Austin, Texas Sam Sparks C. D. Special 1923 State Land Account 1926	892.37 <u>\$1,363.03</u>	2,255.40
"Farmers & Merchants State Bank & Trust Co., Rusk, Texas Texas State Hospital, Rusk, Texas (25 Years Old)	<u>\$ 6.00</u>	6.00
"First National Bank, Huntsville, Texas I. L. Dickey, Prison Account	<u>\$ 15.17</u>	15.17
"First National Bank, Waco, Texas State Banking Board (1925)	<u>\$ 177.54</u>	177.54
"Guaranty Bank & Trust Co., Gatesville, Texas Juvenile Training Free Textbook Fd. (1938)	<u>\$ 25.20</u>	25.20
"TOTAL		<u>\$2,667.32</u>

"The above banks have paid drafts drawn on themselves, signed Jesse James, State Treasurer, for the amounts indicated and charged same against the accounts as listed.

"We are without information relative to the original source of the funds in question other than that they have been held by the banks as inactive accounts for a period ranging from seven to twenty-five years."

In your letter you have also listed and described the following funds, (quoting from your letter requesting the instant opinion):

"Funds deposited May 22, 1957, being money left on deposit in Texas Bank & Trust Company, later taken over by the Capital National Bank, deposit being in the name of Charles R. Lockhart, Departmental Suspense Account, apparently for the purpose of paying outstanding checks issued against the account for the General Land Office. Last reported check to clear was for \$1.00 on April 28, 1938. (We cannot locate a list of the outstanding checks). \$372.00

"Deposit by Bond Division of Treasury on  
March 8, 1937 (We cannot determine who this  
belongs to). \$ 1.30

"Deposit by Bond Division of Treasury on  
January 24, 1941  
U. S. Treasury check, for which no claimants  
could be located. \$ 3.25

"Deposit by Bond Division of Treasury  
on April 1, 1942  
Apparently error in remittance for Summerfield  
Consolidated I.S.D. Refunding bonds. \$ 1.25

"Balance on deposit representing amounts  
of outstanding checks issued against Old General  
Land Office, Suspense Account. No checks pre-  
sented since February 18, 1941. \$706.36"

Attorney General's Opinion No. O-5844 (1944) indi-  
cated that the funds considered in that opinion could not be  
transferred to the General Revenue Fund "until in some way  
the proper status and disposition thereof are ordered by a  
court of competent jurisdiction, or by legislative act".

Thereafter, in 1945, the 49th Legislature passed  
the following Act, which is now codified in Vernon's Civil  
Statutes as Article 4344a, which reads as follows:

"The Comptroller, with the consent and  
approval of the State Auditor and Efficiency  
Expert, and the State Treasurer, may at any  
time, transfer any balance in any dormant fund,  
the source of which is unknown or the purpose  
for which it was collected has become moot, into  
the General Revenue Fund. Any transfer so made  
may be subject to appropriation as a refund by  
the Legislature, should the source and purpose  
of such fund become known and active at any time  
in the future."

The above statute does not refer to the funds in  
question by name or account, but its language is sufficiently  
plain and unambiguous, and its application is so broad as to  
encompass any fund, if such funds meet the following require-  
ments:

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1. The fund must be dormant.
2. The source must be unknown, or the purpose for which it was collected must have become moot.

According to your letter and the information received in conference with your assistants, all the funds under consideration have not been drawn upon and have otherwise remained inactive for a period ranging between sixteen and thirty-nine years prior to this time. "Dormant" has been defined as ". . . silent; not known; not acting . . ." I Bovier's Law Dictionary, dormant, page 928. "Dormant" has further been defined in 19 Corpus Juris Secundum, page 445, as meaning ". . . being in a state of lethargy; not aroused to action, although capable of it; . . .".

In our opinion the subject funds fall within the meaning of the term "dormant" as used in Article 4344a, Vernon's Civil Statutes.

You have further indicated that either the source of the subject funds is unknown or the purpose for which said funds were collected has become moot. Therefore, the subject funds meet the second and final prerequisite established by Article 4344a, Vernon's Civil Statutes, in order to be eligible for transfer into the General Fund.

#### SUMMARY

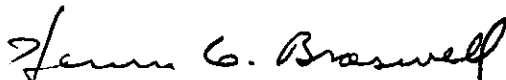
Article 4344a, Vernon's Civil Statutes, authorizes the transfer by the Comptroller, with the consent and approval of the State

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Auditor and Efficiency Expert  
and the State Treasurer, to the  
General Revenue Fund the funds  
referred to in your letter.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Henry G. Braswell  
Assistant

HGB:mg

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

Riley Eugene Fletcher  
Richard B. Stone

REVIEWED FOR THE ATTORNEY GENERAL

By: W. V. Geppert